

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

)

CRIMINAL NO. 102888

VERSUS

)

**LEE BOYD MALVO a/k/a
John Lee Malvo**

)

**INDICTMENT - CAPITAL MURDER (2
Counts) and USING A FIREARM IN THE
COMMISSION OF A FELONY**

On March 3, 2003, Robert F. Horan, Jr., the Commonwealth's Attorney, Raymond Morrogh, the Deputy Commonwealth's Attorney, LEE BOYD MALVO a/k/a John Lee Malvo, the Defendant, and Michael Arif and Craig Cooley, Co-Counsel for the Defendant, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER (2 Counts) and USING A FIREARM IN THE COMMISSION OF A FELONY and he appeared while in custody.

This case came before the Court for argument on the Defendant's Motion for Timely Disclosure of Exculpatory Evidence.

As a preliminary matter, the Commonwealth stipulated that, for the purposes of the Commonwealth's obligations under *Brady v. Maryland* or any discovery order of this Court, the "Commonwealth" or the "Commonwealth's Attorney" shall be deemed to include any law enforcement agencies or prosecutors who are members of the regional task force investigating the offenses with which the defendant has been charged.

The Court ruled as follows with respect to the separately numbered paragraphs of the defendant's motion:

1. The Commonwealth shall disclose to the defendant any problems or irregularities of which it is aware regarding the DNA, fingerprint or other forensic evidence in this case. The Commonwealth shall further disclose to the defendant any credible leads that it stopped pursuing as a result of the defendant's arrest.

2. The Commonwealth shall disclose to the defense any confession or statement made by the defendant or the co-defendant in whatever form (e.g., written, audio-taped, video-taped) that it may exist.

3 – 5. The Commonwealth will disclose to the defendant the information requested in these paragraphs to the extent it is exculpatory.

6. Granted.

7 – 8. The Commonwealth shall disclose to the defendant to substance of the information requested in these paragraphs if exculpatory. This does not include the documents, memoranda or reports themselves.

9. Granted.

10. Granted.

11. Granted.

12. The Commonwealth will provide the defendant the criminal record of any Commonwealth's witness upon the completion of the witness's testimony.

13. Denied.

14. The Commonwealth shall disclose any promises made to or other consideration given to the Commonwealth's witnesses in exchange for their truthful testimony.

15. Granted.

16. Denied.

17. Denied.

18 – 34. The Commonwealth represented that there are to date no "jailhouse informants" or "jailhouse snitches." To the extent that any become known hereafter to the Commonwealth, the Commonwealth will disclose the requested information.

35. Granted. If the Commonwealth discloses any scientific reports pursuant to this paragraph or Rule 3A:11, the defendant shall give the Commonwealth the reciprocal discovery required by Rule 3A:11(c).

36. Granted, to the extent that such physical items are reasonable and material.

37. Granted, to the extent the statements were made by the defendant.

38. Granted, to the extent the statements were made by the defendant.

39. Denied, except to the extent that the information is *Brady* material.

40. Granted, to the extent the requested information is mitigating.

41. Granted, to the extent the requested information is exculpatory.

42. Granted, to the extent the requested information is exculpatory.

43. Granted.

44. Granted.

45. The Commonwealth represented that to date it has no information that would cast doubt upon the defendant's guilt. To the extent that any such information may become known hereafter to the Commonwealth, the Commonwealth will disclose the requested information.

46. The Commonwealth will reveal any material inconsistencies in the statements of the Commonwealth's witnesses.

47. Granted, to the extent that the Commonwealth will disclose any evidence that may call into question the legal bases of the indictment.

48. Granted, to the extent the inconsistencies are material.

49. Granted, to the extent the inconsistencies are material.

50. Granted, as to statements "denying" the unadjudicated acts. Denied, as to statements "confirming" the unadjudicated acts.

51. Granted.

52. Withdrawn, as duplicative of ¶ 51.

53. Granted, to the extent that the Commonwealth will disclose to the defendant any problems or irregularities of which it is aware regarding the DNA, fingerprint or other forensic evidence related to the unadjudicated acts that the Commonwealth intends to use at trial.

54. The Commonwealth represented that to date it has no information that would show that another party was more culpable, dominant or dangerous than the defendant with regard to the offenses with which the defendant has been charged. To the extent that any such information may become known hereafter to the Commonwealth, the Commonwealth will disclose the requested information.

55. The Commonwealth will disclose to the defendant the curriculum vitae of its expert witnesses in the fields of psychology, psychiatry or predicting future dangerousness. The remainder of the information requested in ¶ 55 is denied.

56. Denied.

57(A). Granted, to the extent that any lost or destroyed evidence was discoverable or exculpatory.

57(B). Granted.

The Defendant was remanded to the custody of the Sheriff.

Entered on March 21, 2003.

JUDGE JANE MARUM ROUSH